



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: National Maintenance, Inc.

File: B-224186; B-224186.2

Date: November 18, 1986

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### DIGEST

The General Accounting Office will not review a protest concerning a determination of the Small Business Administration (SBA) to issue a certificate of competency (COC) except upon a prima facie showing of fraud, bad faith, or willful disregard of vital information bearing on the small business firm's compliance with definitive responsibility criteria. Where the SBA is aware of the criteria and of the agency's determination that the small business lacks sufficient experience to meet the criteria, the "vital information" test is met.

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### DECISION

National Maintenance, Inc. protests the proposed award of a contract to TMD Enterprises, Inc., the apparent low bidder under invitation for bids No. DABT02-86-B-0111, issued by the Department of the Army for hospital housekeeping services at Fort McClellan, Alabama. National Maintenance claims TMD Enterprises is nonresponsive and that the Small Business Administration (SBA) erroneously granted it a certificate of competency (COC). The protester, the sixth-low bidder, contends that neither TMD Enterprises nor any of the other lower bidders have experience sufficient to meet a definitive responsibility criterion included in the solicitation.

We dismiss the protest.

The Army found TMD Enterprises, a small business, nonresponsive because the firm did not meet a solicitation requirement for a minimum of 2 years' hospital housekeeping experience within the previous 3 years; this was to include experience in vital patient care areas. When a preaward survey showed that TMD had only 15 months' experience in hospital housekeeping services, the agency referred the matter to the Regional Office of the SBA, as required by the Small Business

Act, 15 U.S.C. § 637(b)(7)(A) (1982), and the implementing Federal Acquisition Regulation, 48 C.F.R. § 19.602-1 (1985). In so doing, the agency stated, in writing, that it found TMD Enterprises nonresponsible based upon the solicitation's corporate experience requirement. The agency also provided the SBA with copies of the solicitation, the preaward survey findings, financial information, and the abstract of bids, all in support of the nonresponsibility determination. The SBA, however, issued a COC to TMD Enterprises on October 29, 1986.

Our Office generally does not review COC determinations because the SBA has conclusive statutory authority to determine a small business firm's responsibility. 15 U.S.C. § 637(b)(7)(A). We will consider protests by third parties concerning the SBA's issuance of a COC only upon a prima facie showing that government officials acted fraudulently or in bad faith or wilfully disregarded vital information bearing on a small business firm's compliance with definitive responsibility criteria. E-Systems, Inc., 60 Comp. Gen. 283 (1981), 81-1 CPD ¶ 137; J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD ¶ 322. The "vital information" test is met so long as SBA is aware of the definitive criteria in deciding to issue the COC. E-Systems, Inc., supra. Moreover, even if we find that certain information was not considered, our role is limited to suggesting that the SBA reconsider its decision. U.S. Eagle, Inc., et al., B-193773, Aug. 2, 1979, 79-2 CPD ¶ 73.

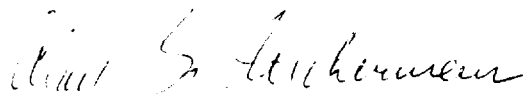
We have recognized SBA's authority to consider whether, under the circumstances of a particular procurement, a small business concern is capable of performing despite the fact that it does not meet special standards or definitive criteria of responsibility. See, e.g., Baxter & Sons Elevator Co., Inc., 60 Comp. Gen. 97 (1980), 80-2 CPD ¶ 414 (small business is capable of performing even though it does not maintain spare parts inventory required by solicitation to ensure timely performance); J. Baranello and Sons, supra, (small business is capable of performing when it has experience equivalent to that specified in solicitation). In other words, the SBA's authority is not limited by definitive responsibility criteria that a procuring agency includes in a solicitation, and a bidder's compliance with definitive criteria therefore is not a prerequisite to the issuance of a COC. Micrographics International, Inc., B-202043, Mar. 4, 1981, 81-1 CPD ¶ 164.

Here, the SBA's action has the effect of overriding the criterion for hospital housekeeping experience, including

that in vital patient areas. See Geochemical Testing Inc., B-203757, Dec. 31, 1981, 81-2 CPD ¶ 519. The records shows that the Army provided the SBA with written notice of the experience requirements and copies of relevant documents such as the preaward survey, in which it indicated that TMD Enterprises did not meet the definitive criterion. The vital information test therefore is met.

Since the SBA was not bound by the criteria in deciding to issue the COC, the fact that the low bidder in this case does not have the requisite experience does not suggest that the COC issuance resulted from fraud or bad faith. Micrographics International, Inc., supra. Therefore, there is no legal basis for our Office to recommend that the SBA reconsider its decision to issue the COC to TMD Enterprises.

The protest is dismissed.



for  
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General Counsel